

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, ET
AL.,

Debtors.¹

PROMESA
Title III

Case No. 17-BK-03283 (LTS)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE COMMONWEALTH
OF PUERTO RICO,

PROMESA
Title III

Case No. 17-BK-03566 (LTS)

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Debtor.

THE SPECIAL CLAIMS COMMITTEE OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, ACTING BY AND
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALL TITLE III DEBTORS
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF PUERTO RICO,

Plaintiff,

v.

DEFENDANT 1M, ET AL.,

Defendants.

Adv. Proc. No. 19-00356 (LTS)

THE SPECIAL CLAIMS COMMITTEE OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, ACTING BY AND
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALL TITLE III DEBTORS
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF PUERTO RICO,

Plaintiff,

v.

STOEVEER GLASS & CO., ET AL.,

Adv. Proc. No. 19-00357 (LTS)

Defendants.

THE SPECIAL CLAIMS COMMITTEE OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, ACTING BY AND
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALL TITLE III DEBTORS
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF PUERTO RICO,

Plaintiff,

v.

DEFENDANT 1H-78H,

Defendants.

Adv. Proc. No. 19-00359 (LTS)

THE SPECIAL CLAIMS COMMITTEE OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, ACTING BY AND
THROUGH ITS MEMBERS,

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALL TITLE III DEBTORS
(OTHER THAN COFINA),

as co-trustees of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF PUERTO RICO,

Plaintiff,

Adv. Proc. No. 19-00361 (LTS)

v.

DEFENDANT 1G-50G, et al.,

Defendants.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO,

and

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALL TITLE III DEBTORS (OTHER
THAN COFINA),

as section 926 trustee of

THE COMMONWEALTH OF PUERTO RICO

Plaintiffs,²

v.

ANDALUSIAN GLOBAL DESIGNATED ACTIVITY
COMPANY; THE BANK OF NEW YORK MELLON;
MASON CAPITAL MASTER FUND LP; OCHER
ROSE, L.L.C.; SV CREDIT, L.P.; CROWN
MANAGED ACCOUNTS FOR AND ON BEHALF
OF CROWN/PW SP; LMA SPC FOR AND ON
BEHALF OF MAP 98 SEGREGATED PORTFOLIO;
OCEANA MASTER FUND LTD.; PENTWATER
MERGER ARBITRAGE MASTER FUND LTD.;
AND PWCM MASTER FUND LTD,

Adv. Proc. No. 19-00366 (LTS)

² The Official Committee of Unsecured Creditors serves as section 926 trustee and co-plaintiff in the prosecution of this adversary proceeding pursuant to Docket No. 6990, which is incorporated herein by reference.

Defendants.)	
)	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,)	Adv. Proc. No. 19-00367 (LTS)
as representative of)	
EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,)	
and)	
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS (OTHER THAN COFINA),)	
as section 926 trustee of)	
THE COMMONWEALTH OF PUERTO RICO)	
Plaintiffs, ³)	
v.)	
GLENDON OPPORTUNITIES FUND, L.P.; OAKTREE-FORREST MULTI-STRATEGY, LLC (SERIES B); OAKTREE OPPORTUNITIES FUND IX, L.P.; OAKTREE OPPORTUNITIES FUND IX (PARALLEL 2), L.P.; OAKTREE VALUE OPPORTUNITIES FUND, L.P.; PUERTO RICO AAA PORTFOLIO BOND FUND, INC.; PUERTO RICO AAA PORTFOLIO BOND FUND II, INC.; PUERTO RICO AAA PORTFOLIO TARGET MATURITY FUND, INC.; PUERTO RICO FIXED INCOME FUND, INC.; PUERTO RICO FIXED INCOME FUND II, INC.; PUERTO RICO FIXED INCOME FUND III, INC.; PUERTO RICO FIXED INCOME FUND IV, INC.; PUERTO RICO FIXED INCOME FUND V, INC.; PUERTO RICO GNMA & U.S.)	

³ The Official Committee of Unsecured Creditors serves as section 926 trustee and co-plaintiff in the prosecution of this adversary proceeding pursuant to Docket No. 6990, which is incorporated herein by reference.

GOVERNMENT TARGET MATURITY FUND,)
 INC.; PUERTO RICO INVESTORS BOND FUND I;)
 PUERTO RICO INVESTORS TAX-FREE FUND,)
 INC.; PUERTO RICO INVESTORS TAX-FREE)
 FUND II, INC.; PUERTO RICO INVESTORS TAX-)
 FREE FUND III, INC.; PUERTO RICO INVESTORS)
 TAX-FREE FUND IV, INC.; PUERTO RICO)
 INVESTORS TAX-FREE FUND V, INC.; PUERTO)
 RICO INVESTORS TAX-FREE FUND VI, INC.;)
 PUERTO RICO MORTGAGE-BACKED & U.S.)
 GOVERNMENT SECURITIES FUND, INC.; TAX-)
 FREE PUERTO RICO FUND, INC.; TAX-FREE)
 PUERTO RICO FUND II, INC.; TAX-FREE PUERTO)
 RICO TARGET MATURITY FUND, INC.; UBS IRA)
 SELECT GROWTH & INCOME PUERTO RICO)
 FUND,)
)
 Defendants.)
)
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**JOINT STATUS REPORT REGARDING DISCOVERY AND BRIEFING SCHEDULE
 WITH RESPECT TO CERTAIN ISSUES RAISED IN CERTAIN CONTESTED
 MATTERS AND ADVERSARY PROCEEDINGS RELATED TO THE BONDS ISSUED
 BY THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO**

To the Honorable United States District Judge Laura Taylor Swain and the Honorable United States Magistrate Judge Judith G. Dein:

1. Pursuant to this Court’s order (ECF No. 843 in Case No. 17-bk-3566), the Official Committee of Unsecured Creditors (the “Creditors’ Committee”), the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee” and, together with the Creditors’ Committee, the “Committees”), the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) as the Debtor’s representative pursuant to Section 315(b) of PROMESA, the Special Claims Committee of the Financial Oversight and

Management Board for Puerto Rico (the “SCC”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the Oversight Board and the SCC, the “Government Parties”), certain groups of ERS bondholders represented by Jones Day and White & Case LLP (the “ERS Bondholder Groups”),⁴ and The Bank of New York Mellon, as Fiscal Agent for the ERS bonds (the “Fiscal Agent” and, together with the ERS Bondholder Groups, the Committees, and the Government Parties, the “Parties”) respectfully submit this joint status report concerning the briefing and discovery deadlines in the above-captioned matters.

2. On February 6, 2020, the Court entered a modified discovery and briefing schedule in the above-captioned matters. ECF No. 808 in Case No. 17-bk-3566.

3. On March 17, 2020, the Court entered its *Order Regarding Deadlines and Proceedings in the Title III Cases*, which provides that “all scheduled deadlines and hearing

⁴ Altair Global Credit Opportunities Fund (A), LLC, Andalusian Global Designated Activity Company, Crown Managed Accounts for and on behalf of Crown/PW SP, Glendon Opportunities Fund, L.P., LMA SPC for and on behalf of Map 98 Segregated Portfolio, Mason Capital Master Fund LP, Oaktree-Forrest Multi-Strategy, LLC (Series B), Oaktree Opportunities Fund IX, L.P., Oaktree Opportunities Fund IX (Parallel), L.P., Oaktree Opportunities Fund IX (Parallel 2), L.P., Oaktree Huntington Investment Fund II, L.P., Oaktree Opportunities Fund X, L.P., Oaktree Opportunities Fund X (Parallel), L.P., Oaktree Opportunities Fund X (Parallel 2), L.P., Oaktree Value Opportunities Fund Holdings, L.P., Oceana Master Fund Ltd., Ocher Rose, L.L.C., Pentwater Merger Arbitrage Master Fund Ltd., Puerto Rico AAA Portfolio Bond Fund, Inc., Puerto Rico AAA Portfolio Bond Fund II, Inc., Puerto Rico AAA Portfolio Target Maturity Fund, Inc., Puerto Rico Fixed Income Fund, Inc., Puerto Rico Fixed Income Fund II, Inc., Puerto Rico Fixed Income Fund III, Inc., Puerto Rico Fixed Income Fund IV, Inc., Puerto Rico Fixed Income Fund V, Inc., Puerto Rico Fixed Income Fund VI, Inc., Puerto Rico GNMA & U.S. Government Target Maturity Fund, Inc., Puerto Rico Investors Bond Fund I, Puerto Rico Investors Tax-Free Fund, Inc., Puerto Rico Investors Tax-Free Fund II, Inc., Puerto Rico Investors Tax-Free Fund III, Inc., Puerto Rico Investors Tax-Free Fund IV, Inc., Puerto Rico Investors Tax-Free Fund V, Inc., Puerto Rico Investors Tax-Free Fund VI, Inc., Puerto Rico Mortgage-Backed & U.S. Government Securities Fund, Inc., PWCM Master Fund Ltd., Redwood Master Fund, Ltd, SV Credit, L.P., Tax-Free Puerto Rico Fund, Inc., Tax-Free Puerto Rico Fund II, Inc., Tax-Free Puerto Rico Target Maturity Fund, Inc., and UBS IRA Select Growth & Income Puerto Rico Fund.

dates in the Title III cases and related adversary proceedings shall remain in effect until further order of the Court.” ECF No. 12420 in Case No. 17-bk-3283

4. On March 19, 2020, the Parties filed a joint motion regarding the status of the discovery and briefing schedule in these proceedings, and requested adjournment of certain deadlines and to file a joint status report on the schedule on or before March 25, 2020. ECF No. 841 in Case No. 17-bk-3566.

5. On March 20, 2020, the Court granted the Parties’ joint motion, adjourning certain deadlines and ordering a status report due on or before March 25, 2020. ECF No. 843 in Case No. 17-bk-3566.

6. On March 24, 2020, counsel to the Oversight Board conferred by telephone with counsel to the ERS Bondholder Groups regarding the schedule in these proceedings.

7. Also on March 24, 2020, counsel to the Oversight Board sent a proposed schedule for these proceedings to counsel to the ERS Bondholder Groups and the Fiscal Agent.

8. The Parties disagree as to whether the Court should enter a modified schedule at this time, and the Parties make the following respective statements:

Position of the Committees and Government Parties

9. The Oversight Board, Special Claims Committee, Retiree Committee, and AAFAF respectfully request that the Court enter a modified schedule now to ensure that the Parties continue to progress these proceedings to the extent possible despite recent events.⁵

10. The Parties have a number of fact depositions to complete, including depositions of witnesses located in Puerto Rico, and the Oversight Board, Special Claims Committee, Retiree

⁵ The Creditors’ Committee takes no position on the requested modifications to the schedule at this time and reserves its rights.

Committee, and AAFAF are actively evaluating ways to take and defend those depositions by remote electronic means, as specifically contemplated by Fed. R. Civ. P. 30(b)(4). The Oversight Board, Special Claims Committee, Retiree Committee, and AAFAF are aware of the challenges of conducting remote depositions, but believe both that conducting depositions remotely is a viable option and that doing so would allow for depositions to be completed notwithstanding those challenges in the timeframe proposed below.

11. The Oversight Board, Special Claims Committee, Retiree Committee, and AAFAF respectfully request that the Court enter the proposed schedule below, and remain hopeful the Parties can meet the proposed deadlines despite recent events:

Event	Prior Date	Proposed Date
Disclosure of experts (if any) and a summary of the subjects about which they will offer opinions	3/20/2020	4/30/2020
Deadline for completion of fact discovery	3/30/2020	5/11/2020
Service of expert reports (if any)	4/1/2020	5/12/2020
Disclosure of rebuttal experts and service of rebuttal expert reports (if any)	4/15/2020	5/29/2020
Deadline for completion of expert depositions (if any)	4/27/2020	6/12/2020
Deadline for filing motions for summary judgment and declarations in support	5/6/2020	6/22/2020
Deadline for Participants to file joinders in the motions for summary judgment on the Ultra Vires Issues	5/13/2020	6/29/2020
Deadline for filing oppositions to summary judgment briefs and declarations in support	6/3/2020	7/20/2020
Deadline for Participants to file joinders in oppositions to the motions summary judgment briefs on the Ultra Vires Issues	6/10/2020	7/27/2020
Reply ISO SJ	6/17/2020	8/3/2020

Position of the ERS Bondholders and the Fiscal Agent

12. The ERS Bondholders share the goal of moving this case forward as deliberately as possible, but unfortunately neither the Court nor the parties have any way to know whether the schedule proposed by the Retiree Committee, the Special Claims Committee, and the Government Parties will be workable under the current circumstances. The public health emergency created by COVID-19 is rapidly changing, and there is a great deal of critical discovery that has yet to be done but that is being held up by the emergency. Accordingly, the ERS Bondholders' position is that the deadlines in the current case schedule should be adjourned, and the parties should submit a further joint status report in 14 days (on April 8). By that time, there will likely be further clarity regarding the health emergency and its ongoing effects, such that a more informed case schedule can be put in place.

13. The most prominent of the remaining fact discovery challenges are several depositions that were noticed months ago but that have not yet occurred. In late February and early March, the ERS Bondholders made six of their witnesses available for depositions by the Committees and Government Parties. The ERS Bondholders, however, have not yet been able to take any depositions of their own, notwithstanding that the Bondholders served notices for those depositions in December and January. The depositions that the Bondholders want to take, moreover, are critical. They include, among others, depositions of the Rule 30(b)(6) designee of ERS, the Commonwealth, and AAFAF, and of the ERS Administrator at the time of the ERS Bonds' issuance.

14. Almost all of these remaining depositions had been previously scheduled but had to be taken off-calendar once the health crisis hit. Of the at least eight witnesses who must still be deposed, two of the witnesses are located in New York, one is located in California, and

five—including all the witnesses the ERS Bondholders want to depose—are located in Puerto Rico. All three jurisdictions currently have mandatory stay-home orders in place, with all non-essential businesses shut down.⁶ New York’s and California’s orders have no end date. The Puerto Rico order presently ends on March 30, but recent press reports state that Puerto Rico’s governor has ordered that starting today, all travelers arriving in the Commonwealth will be placed under 24/7 mandatory “lockdown” for 14 days. Many of counsel’s offices throughout the United States have been ordered to close, and those that are still open are operating with barebones staffing and restrictions on visitors. Under these circumstances, it is unclear when any of these eight depositions can be put back on the calendar.

15. Remote, video depositions will also not be a viable alternative. Video depositions are a poor substitute for live depositions even under the best circumstances. Coupling video depositions with the need to take depositions via Spanish translation—which will be needed for ERS, the Commonwealth, and AAFAF’s 30(b)(6) designee and certain other Puerto Rico witnesses—is likely to be nearly impossible, particularly as such depositions will involve cumbersome and voluminous financial exhibits.⁷ And that assumes that such depositions are even possible. New York has prohibited “[n]on-essential gatherings of individuals *of any size*

⁶ See <https://coronavirus.health.ny.gov/new-york-state-pause>; <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>; Puerto Rico Administrative Bulletin No.: OE-2020-023.

⁷ As a point of reference, ERS alone has produced more than 16,000 documents consisting of more than 110,000 pages in these *ultra vires* and lien scope proceedings, including more than 3,000 Excel spreadsheets that are not included in that page count. The ERS Bondholders certainly do not anticipate asking the ERS witness about anywhere close to that number of documents, but the ERS Bondholders will nevertheless have questions about a significant number of them.

*for any reason,”*⁸ and does not list civil litigation as “essential business.”⁹ California’s order is similar.¹⁰ Puerto Rico has prohibited non-emergency travel on public roads for any purpose, with exceptions that do not include civil litigation.¹¹ While some court reporters may be operating remotely, a deposition in which questioning counsel, witness, translator, and court reporter are *all* located in different places is in counsel’s experience highly unlikely to succeed. Moreover, if witnesses do not already have the equipment necessary for a video deposition and know how to set it up themselves, it will likely be impossible to conduct a video deposition even by those problematic means. And with counsel’s offices closed and nearly all businesses shut down, it will be difficult or impossible to print and send the voluminous exhibits necessary for use in the depositions.

16. Nor are the problems limited to depositions. Puerto Rico has also shut down all non-essential government functions, which has delayed ERS’s ability to provide essential information to the ERS Bondholders about ERS’s financial records produced in discovery. The ERS Bondholders do not begrudge ERS this delay—public health considerations properly take precedence. But the delay has put the ERS Bondholders at a distinct informational disadvantage and adds to the uncertainty over what sort of schedule may ultimately prove workable.

17. The ERS Bondholders hope that the public health emergency will soon stabilize and improve. If it does, then a schedule similar to that proposed by the Retiree Committee, the Special Claims Committee, and the Government Parties may indeed be workable. But at present,

⁸ <https://coronavirus.health.ny.gov/new-york-state-pause> (emphasis added)

⁹ <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>

¹⁰ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

¹¹ Puerto Rico Administrative Bulletin No.: OE-2020-023, § 6.

the situation is still changing by the day, and the ERS Bondholders just do not see the point in building a schedule on a foundation of such uncertainty. The ERS Bondholders believe that the better course of action is to let the current situation continue to evolve over the next 14 days, at which point there will likely be greater clarity about what can be accomplished and when. The ERS Bondholders therefore request that the Court order that the present schedule be adjourned, and order the parties to file a new joint status report on April 8 addressing an appropriate schedule.

18. The Fiscal Agent joins in the ERS Bondholders' position.

Conclusion

19. For the avoidance of doubt, the Parties reserve all of their rights.
20. The Parties appreciate the Court's attention to these matters.

Dated: March 25, 2020
New York, NY

Respectfully submitted,

/s/ Alfredo Fernández-Martínez

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/s/ Catherine Steege

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

Dated: March 25, 2020

/s/ Bruce Bennett